have shown to be desirable, to the end that a more effective, speedy and inexpensive system of criminal justice may be secured, more modern and effective methods of dealing with criminals may be introduced, and the causes of the present widespread and increasing popular dissatisfaction with the administration of the criminal law may be removed. The JOURNAL will encourage and advocate legislation looking toward the collection and publication of more systematic statistical and descriptive information relating to the causes, nature and punishment of crime, including judicial statistics showing the efficiency of those agencies and instrumentalities charged with the detection and punishment of crime. Finally, the JOURNAL will furnish reviews of recent and current scientific literature in English and foreign languages, dealing with the progress of criminal jurisprudence and penal methods, together with bibliographical and miscellaneous notes of interest to students of the criminal law, criminology and the allied sciences.

It is believed that such a journal will appeal not only to intelligent practitioners who are interested in the progress of a scientific criminal law, but to all persons, public officials and private individuals alike, who are concerned directly or indirectly with the administration of punitive justice, as well as to a large group of scholars who are working in the allied fields of sociology, anthropology, psychology, philanthropy, etc. It is now recognized that all these sciences are more or less closely related to criminal jurisprudence and criminology and that they are capable of throwing a vast amount of much-needed light on many problems of the criminal law. Each is in a sense contributory to the others and at many points their spheres touch and even overlap.

J. W. G.

PROPOSED REFORMS IN FEDERAL PROCEDURE. Theodore Roosevelt was the first president of the United States to make the matter of the law's delay a subject of discussion in his messages to Congress and to recommend legislation for the improvement of federal procedure, with particular reference to the elimination of technicalities. In his message of December, 1906, he suggested the enactment of a law prohibiting reversals and the granting of new trials on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court to which the application is made, after an examination of the entire case, it shall affirmatively appear that the error complained of has resulted in a miscarriage

of justice. In his message of December, 1907, he dwelt at some length on the evils that have grown up in connection with the administration of the criminal law, the most flagrant of which, he said, were sentimentality and technicality. The remedy for the latter, he went on to say, must come from the legislatures, the courts and the lawyers, while the first must depend for its cure upon the gradual growth of a sound public opinion which shall insist that regard for the law and the demands of reason shall control all other influences and emotions in the jury box. Both of these evils, he declared with evident truth, must be removed or public discontent with the criminal law will continue. In his message of December, 1908, he again returned to the subject saying,

"It is earnestly to be desired that some method should be devised for doing away with the long delays which now obtain in the administration of justice, and which operate with peculiar severity against persons of small means and favor only the very criminals whom it is most desirable to punish. These long delays in the final decisions of cases make in the aggregate a crying evil, and a remedy should be devised. Much of this intolerable delay is due to improper regard paid to technicalities which are a mere hindrance to justice. In some noted recent cases this over-regard for technicalities has resulted in a striking denial of justice, and flagrant wrong to the body politic."

President Taft, who from his long experience at the bar and on the bench may be presumed to speak with an authority, a knowledge and a depth of conviction which Mr. Roosevelt did not possess, has on a number of occasions recently asserted that the administration of the criminal law in this country is a shame and a reproach to our civilization and that in his judgment the greatest question before the American people to-day is the improvement of our methods of procedure, to the end that a more speedy, certain and inexpensive system of justice may be obtained. In magazine articles and in public speeches Mr. Taft has again and again dwelt upon this question with an earnestness which comes from a deep sense of duty, pointing out in the most convincing manner the sources of the evil and suggesting the remedies that ought to be applied to meet the situation. Before the Virginia Bar Association in August, 1908, and in a public address at Chicago on September 16, 1909, he made this question the principal theme of discussion. In the Chicago speech, in particular, he called attention to the fact that the English procedure, from which we derived our own, has been improved until delays are now practically unknown. "In England," he said,

"the judge controls the trial, controls the lawyers, keeps them to relevant and proper argument, aids the jury in its consideration of the facts, not by direction but by suggestion, and the lawyers are made to feel that they have an obligation not only to their clients but also to the court and to the public at large, not to abuse their office in such a way as to unduly lengthen the trial and unduly to direct the attention of the court and the jury away from the real facts at issue." "A murder case in England," he continued, "will be disposed of in a day or two days that here will take three weeks or a month and no one can say, after an examination of the record in England, that the rights of the defendant have not been preserved and that justice has not been done." A trial in America, the President declared, is a game in which the advantage is with the criminal, and, if he wins, he seems to have the sympathy of a sporting public. Referring to the expense of litigation on account of the employment of lawyers and the payment of costs, a burden which in effect gives the well-to-do litigant an important advantage over the poor man, in violation of the principle of equal justice, he said,

> "What the poor man needs is a prompt decision of his case, and by limiting the appeals in cases involving small amounts of money, so that there shall be a final decision in the lower court, an opportunity is given to the poor litigant to secure a judgment in time to enjoy it, and not after he has exhausted all his resources in litigating to the Supreme Court.
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> "I am a lawyer and admire my profession, but I must admit that we have had too many lawyers in legislating on legal procedure, and they have been prone to think that litigants were made for the purpose of furnishing business to courts and lawyers, and not courts and lawyers for the benefit of the people and litigants."

We must, he said, make it so that the poor man will have as nearly as possible an equal opportunity in litigating with the rich man, but under present conditions, be it said to our shame, this is not the case. Concluding his Chicago speech the President ventured the opinion that the time was now ripe for the appointment of a commission by Congress to take up the question of the law's delays in the federal courts and to report a system which should not only secure quick and cheap justice to litigants in the federal courts, but which would offer a model to the legislators and courts of the states by the use of which they could themselves institute reforms.

In his first annual message to Congress in December, 1909, Mr. Taft gave an important place to a discussion of the need of reform in our court procedure, saying,

"The deplorable delays in the administration of civil and criminal law have received the attention of committees of the American Bar Association and of many state bar associations, as well as the considered thought of judges and jurists. In my judgment, a change in judicial procedure, with a view to reducing its expense to private litigants in civil cases and facilitating the dispatch of business and final decision in both civil and criminal cases, constitutes the greatest need in our American institutions. I do not doubt for one moment that much of the lawless violence and cruelty exhibited in lynchings is directly due to the uncertainties and injustice growing out of the delays in trials, judgments and the executions thereof by our courts.

"Of course, these remarks apply quite as well to the administration of justice in state courts as to that in federal courts, and without making invidious distinction, it is perhaps not too much to say that, speaking generally, the defects are less in the federal courts than in the state courts. But they are very great in the federal courts. The expedition with which business is disposed of both on the civil and criminal side of English courts under modern rules of procedure makes the delays in our courts seem archaic and barbarous. The procedure in the federal courts should furnish an example for the state courts."

Referring to the impossibility, in the absence of a constitutional amendment of uniting under one form of action proceedings at common law and equity in the federal courts, he asserted that it was, however, undoubtedly within the power of Congress to simplify and make short and direct the procedure both at law and equity in those courts. Carrying out the suggestion in his Chicago speech in regard to the desirability of an inquiry into the existing methods of procedure with a view to making improvements therein, the President recommended the appointment of a commission with authority to examine the law and equity procedure of the federal courts of first instance, the law of appeals from those courts to the courts of appeals and to the Supreme Court, and the costs imposed in such procedure upon private litigants and upon the public treasury and make recommendations with a view to simplifying and expediting the procedure as far as possible and making it as inexpensive as may be to the litigant of little means. A bill to carry out the latter recommendation is now before the Judiciary Committee of the House of Representatives. It was introduced by Mr. Madison and empowers the President to appoint a commission of five lawyers, of ample experience in the practice of their profession, to prepare and report to the next Congress, at its first regular session, a complete code regulating the procedure in the courts of the United States, and made as nearly uniform in all kinds of causes as is practicable; designed to expedite trials and decisions and allowing reviews by appeal, without any unnecessary formality or

expense, and of such questions as are now reviewable by appeal, writ of error, or certiorari. Another bill, introduced by Representative Parker, chairman of the Judiciary Committee, proposes several modifications of federal procedure with a view to removing certain of the evils complained of by President Taft. This bill was drawn by a committee of the American Bar Association and was under consideration by the association for four years. At the Seattle meeting in August, 1908, it was fully discussed and was, with the exception of section 2, which was referred back to the committee, almost unanimously approved by the Association. In this form it was discussed before the Judiciary Committee at the last Congress and was amended to meet the criticism of certain members of the committee. As thus amended it was reported back to the American Bar Association at its annual meeting in Detroit in 1909 and was approved by the association with but one dissenting vote.

The first section of the bill provides that

"no judgment should be set aside, or reversed, or new trial granted, by any court of the United States in any case, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, in the opinion of the court to which application is made, after an examination of the entire cause it shall appear that the error complained of has resulted in a miscarriage of justice."

This provision embodies the exact recommendation of President Roosevelt in his annual message of December, 1906, and is substantially the suggestion made by Mr. Taft in an article published in the Yale Law Journal before his election.[1] Another provision of the bill forbids the issue of writs of error in criminal cases unless a justice of the Supreme Court shall certify that there is probable cause for believing that the defendant was unjustly convicted. The purpose of this provision is to prevent an abuse of the right of appeal, which has often proved a disgrace to the administration of justice both in the federal and the state courts. Under the present law the judge has no discretion and is bound to allow an appeal as a matter of course. A criminal who has been convicted in a state court and has had his conviction affirmed by the highest court of the state may sue out a writ of error from the United States Supreme Court, alleging that a federal question is involved. Although it may be clear that no such question is involved and that the purpose is only to

[1]Vol. XV, p. 1.

cause delay the judge is, as has been said, bound to allow the writ; the result being that justice is delayed and frequently defeated. The proposed amendment makes it incumbent upon the appellant or plaintiff in error to satisfy a justice of the Supreme Court that he has been unjustly convicted, otherwise the appeal will not be allowed, the idea being that if he cannot convince one of the justices of probable cause there is no reason to believe that he could satisfy the whole court.

Another proposed amendment prohibits appeals to the Supreme Court in habeas corpus proceedings unless a justice of that court shall certify that there is probable cause for believing that the petitioner is unjustly deprived of his liberty. The evil which it is aimed to eliminate by this amendment and the proposed remedy are substantially the same as those of the preceding provision. In short, it is intended to prohibit the suing out of writs of habeas corpus when one of the justices cannot be satisfied that a federal question is involved and, like the preceding provision, will remove a source of unnecessary delay and thus tend to secure promptness and certainty of punishment where it is deserved. Still another provision permits appeals and writs of error to be taken from the District Courts to the Circuit Courts of Appeal in cases of conviction of an infamous crime, instead of to the Supreme Court, as is now allowed. If we understand the meaning of the proposed amendment its effect will be to make the decision of the Circuit Court of Appeals final in all criminal cases, even those which are capital. Under the present practice writs of error in capital cases may be taken to the Supreme Court and in nearly every such case the privilege of finally resorting to this tribunal is availed of, with the result that justice is not only delayed, but the burden of being compelled to review nearly every capital case in which there has been a conviction in a federal court interferes with the discharge by the Supreme Court of its larger national duties to the country as a whole.

The most important of the reforms proposed by the American Bar Association bill, however, is that which relates to reversals for technical errors. The principle of the proposed rule is, of course, not new to Anglo-American procedure. It has in fact been a rule of English procedure for more than a quarter of a century and has given entire satisfaction in that country. Mr. Everett P. Wheeler of the New York Bar, at a hearing given by the House Judiciary Committee on January 12, last, speaking of the effect of this rule in diminishing the number of reversals

in England, testified that "the entire number of reversals in the last two or three years in proportion to the number of appeals has not exceeded 20 per cent. And where reversals occur final judgment is usually entered. There is seldom occasion for a new trial. In 1907 there were 197 reversals in the English Supreme Court of Judicature. In only nine of these were new trials ordered. The theory of the whole system is that the trial in the first instance shall settle the facts of the case; that you shall take a verdict from the jury on every contested question of fact, and have it understood by all that the first trial is *the* trial; that when the evidence is fresh in the minds of witnesses, and the witnesses are all available, their evidence shall be presented to the jury, and the verdict rendered upon that shall become a part of the record and it shall be for the court thereafter to determine what the law is and how it shall be applied upon that state of facts." The English rule on this point has also lately been introduced into the procedure of several of the American states. Thus the code of criminal procedure of New York enacts that judgment shall be given without regard to technical errors or exceptions which do not affect the substantial rights of the parties. The Pennsylvania Code also contains a similar provision, though according to the testimony of a prominent member of the Philadelphia Bar it has been observed in but one case during the last three years. The rule is also in force in Massachusetts and New Hampshire and has recently been incorporated into the procedure of Wisconsin. The same principle was also incorporated in the act creating the municipal court of Chicago. This act declares that no order or judgment of the municipal court shall be reversed by the Appellate Court or the Supreme Court unless they shall be satisfied that the order or judgment was contrary to law and the evidence or resulted from substantial errors directly affecting the matters at issue. Moreover, the Appellate Court is empowered to enter such order or judgment as in its opinion the municipal court ought to have entered, instead of sending the case back for retrial.

No good reason appears to us why this sensible rule of procedure should not be strictly followed by every court of review in the land, whether federal or state. Some of the actual instances of reversal for error by the state courts, put in evidence before the Judiciary Committee of the House of Representatives at its hearing on January 12, are simply shocking and would not be

tolerated anywhere outside of the United States. And they are not confined to the procedure of the United States, as was pointed out by Judge Moon, a member of the Judiciary Committee, who asserted that federal procedure is about as archaic and as far behind the times as that of any of the states. (Hearings, p. 37.)

The present practice, by which common sense is often sacrificed to technicality, substance to form, and justice to injustice, cannot be reconciled with the sensible rule once laid down by Chief Justice Marshall that "It is desirable to terminate every case upon its real merits if these merits are fairly before the court, and to put an end to litigation where it is in the power of the court so to do." (Church vs. Hubbart, 2 Cranch, 232.) No honest judge would dispute the soundness of this rule, not even those who allow new trials for the pettiest of errors, yet, in practice, they are constantly violating the rule, to the discredit of the judiciary, the promotion of litigation, the defeat of justice and the encouragement of lawlessness. We need, above all, a change of attitude upon the part of the bench and bar in regard to the fundamental purposes of a system of criminal justice and of the right of society to be protected from the criminal class. The law schools should train those who are to fill the ranks of the legal profession to look with contempt upon every attempt to sacrifice substantial justice to technicality. Speaking on this point before the Judiciary Committee at its hearing on January 12, Dean Lawson, of the University of Missouri Law School, remarked:

"In every other branch of science—and we must treat law as a science—the teachers are teaching the science of to-day, wherever it may come from. We are teaching, or have to teach, the legal science of the days of the Tudors, of the early ages, when it comes to the administration of the criminal law. If in other professions and businesses things had gone as badly as they have in the legal profession—and I think it is a great reproach to the lawyers—we would still, instead of using the Hoe press, be using the old press run by hand, and instead of going by great railroads from one end of the continent to the other, we would still be using the stage-coach; and it is one of the most peculiar things that the lawyers seem not to have noticed that in matters of legal practice we are, in most of the Western states, where we were and where England, from which we took our practice, was, over a century ago. But the best thing that can be said to-day is that the lawyers are getting to recognize the necessity."

The bill now before Congress ought to pass without opposition. It has the approval of the best lawyers of the country and the wisdom of the reform which it proposes to introduce has been

demonstrated beyond all question by the experience of England and the few American states where it has been tried. It does not take away from the accused any right to which he is justly entitled, but is designed simply to eliminate unnecessary delays which often result in the defeat of justice. As President Taft has well remarked, it is the duty of the United States to take the lead and adopt a system of procedure which will serve as a model for the states to follow. The opportunity to make an important beginning is now squarely before Congress and we hope it will have the good sense and patriotism to take advantage of it.

J. W. G.

THE RECENT DECISION OF THE ILLINOIS SUPREME COURT ON THE PAROLE LAW.—The decision of the Illinois Supreme Court in People vs. Joyce, handed down February 16, 1910, and reported in 40 Natl. Corp. Repr. 48, in which the court overthrew the entire Parole Law of 1899, has created no small degree of consternation among lawyers, criminologists, and, indeed, all members of the community. This law is the one under which the great majority of those convicted of infamous crimes during the last ten years have been sentenced, and while the opinion of the court in defeating the law of 1899 at the same time revives the earlier act of 1895, as amended in 1897, and authorizes a resentencing of convicts under the earlier acts without the necessity of a retrial, the decision, nevertheless, if it stands, seems likely to give rise to numerous questions of great difficulty and embarrassment and not improbably to open the prison doors to many who are serving sentences justly imposed for crimes committed. The subsequent action of the court in allowing a rehearing in the case and staying proceedings therein has afforded some ground for hope that the court may ultimately change its ruling, and sustain the essential provisions of the law of 1899.

So far as the fundamental principles of the parole system are concerned, the opinion of the court seems unimportant. There is no intimation that those principles are necessarily incompatible with the provisions of the State Constitution. The court had already, in the case of George vs. The People, 167 Ill. 447, sustained the constitutionality of the former parole law. The latter case in no way shakes the authority of the earlier one. In fact, the later case, in overthrowing the parole law of 1899, expressly holds the former parole law to be revived and in full force and